

4/29/08



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April 24, 2008

VIA FACSIMILE (212) 805-7901

Honorable Harold Baer
United States District Judge, SDNY
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Ramon De Antonio Smart v. Police Officer Matthews, et al., 08 Civ. 2203 (HB)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter on behalf of defendant New York City Police Department ("NYPD").¹ In essence, plaintiff's complaint alleges false arrest, excessive force, malicious prosecution and deprivation of property stemming from plaintiff's arrest on July 25, 2006. By way of background, plaintiff served a subpoena on the New York City Civilian Complaint Review Board ("CCRB"), a subdivision of the NYPD, dated April 4, 2008, requesting that CCRB produce documents related to the investigation of the underlying incident by April 24, 2008. Accordingly, I write in response to plaintiff's subpoena to respectfully request that the Court permit defendant NYPD to respond to plaintiff's request for the CCRB file after it has been joined as a party and during the regular course of discovery. Additionally, the Initial Conference in this case is presently scheduled to occur on May 22, 2008 at 3:45 p.m. Plaintiff is incarcerated and proceeding *pro se*, therefore defendant respectfully requests that the Court clarify what, if anything, the Court requires this office to do regarding arranging plaintiff's participation in the conference. Because plaintiff is incarcerated and proceeding *pro se*, this application is made directly to the Court

¹ Upon information and belief, the individuals named in the caption as "Police Officer Matthews," "Police Officer Filizzola," the City of New York, and the New York City Police Department 43rd Precinct have not yet been served with process.

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Defendant's response to the Complaint is presented on Page 2 of 10. The CCRB records that plaintiff subpoenaed are in the custody and control of defendants. Therefore, rather than responding to the subpoena, prior to defendants being joined as parties in this action and prior to the commencement of discovery, defendant respectfully requests that it be permitted to respond to plaintiff's request during the normal course of discovery. Plaintiff's request is premature at this stage of the litigation.

Accordingly, for the reasons set forth above defendant respectfully requests that the Court permit defendant to respond to plaintiff's request for the CCRB file after it has been joined as a party and during the regular course of discovery. Additionally, defendant respectfully requests that the Court clarify what, if anything, it expects defendant to do regarding arranging the conference scheduled for May 22, 2008 with the *pro se*, incarcerated plaintiff.

I thank the Court for its consideration herein.


Respectfully submitted,



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cc: Via First Class Mail
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- ① Discovery will proceed in the regular course + CCRB records may be subpoenaed but not yet.
- ② Ben touch with the TI and inform him he must appear at the PTC
- ③ If incarcerated arrange a T/C
- ④ Show a DT SO with him + feel it out with him in advance of the PTC if at all possible.

SO ORDERED:

Harold Baer, Jr., U.S.D.J.
4/29/08

Endorsement:

1. Discovery will proceed in the regular course and CCRB records may be subpoenaed but not yet.
2. Be in touch with the plaintiff and inform him he must appear at the PTC.
3. If incarcerated arrange a telephone conference.
4. Share a PTSO with him and fill it out with him in advance of the PTC if at all possible.